

MEMORANDUM OF UNDERSTANDING

Utah Department of Transportation and Federal Highway Administration

Contract and Modification Requests Consultant Selection Caps

Revised February 13, 2008

The Utah Department of Transportation (UDOT) and Federal Highway Administration (FHWA) are by this Memorandum agreeing to the following process for handling any new proposed contracts, and modifications to contracts, for engineering services through the General Engineering Services and Local Government Pool of Consultants (Pool), Request for Qualifications (RFQ), and Local Government Engineer of Record. This Memorandum of Agreement will reflect all future Caps as determined for each Pool Request for Qualifications.

Definition of Caps

There are three caps to consider when selecting a consultant for a project. These caps will be defined here and referred to throughout this Memorandum.

1) Pool Contract-Cap

When selecting a consultant through the Pool, there is a cap for any contract, including any modifications, for both State/Federal and Local Government projects.

For Pool period **July 1, 2007 through June 30, 2009**: The contract-cap is **\$600,000**.

If a contract request exceeds \$450,000, Consultant Services highly recommends an RFQ selection process be used instead of selecting through the Pool.

2) Pool Consultant-Cap

Each consultant that is selected as qualified for engineering services work and is placed on the list of pool consultants has a cumulative cap to the amount of work they may be selected for during the two-year period of the Pool.

For Pool period **July 1, 2007 through June 30, 2009**: The consultant-caps are **\$2,500,000** for State/Federal Pool projects and **\$1,800,000** for Local Government Pool projects.

Request for Qualifications

A consultant selected through an RFQ process does not have a dollar cap, the range is **\$200,000 to unlimited** within the fully disclosed Scope of RFQ. If the requester has justification for using the RFQ selection process for a contract under \$200,000, the requester may apply for a waiver from the Consultant Services Manager.

All Environmental Assessments and Environmental Impact Statements are required to go through an RFQ selection process. A separate consultant selection is required for design work. Therefore, two separate contracts will be written by Consultant Services for environmental and design. In accordance with 23 U.S.C. 112(g), FHWA and UDOT will allow the same consultant, if qualified, to perform both the environmental and design work, if the appropriate consultant selection process was performed. On projects where the environmental and design services are procured under a single contract, the UDOT will conduct a review that assesses the objectivity of the environmental analysis prior to its submission to FHWA.

Engineer of Record for Local Government

A consultant selected through an Engineer of Record (EOR) process does not have a dollar cap; the range is **\$0 to unlimited** within the fully disclosed Scope of RFQ. There are currently five work areas that a Local Government Agency may designate an EOR for Federally-Aided Projects: Bridge Design, Environmental, Utility, Preconstruction, and Construction Management. Local Government Engineer of Record RFQ shall be reviewed to confirm expertise for that type of work - refer to Chapter 6 of Consultant Services Manual of Instructions. The Local Government Agency has the right to restrict Scope, Schedule, and Budget of each project RFQ.

Local Governments are required on federally funded projects to comply with the UDOT consultant selection process. UDOT encourages Local Governments to advertise their federally funded projects through Consultant Services. Utilizing Consultant Services will prevent the project from losing funding because the UDOT selection process was not followed. Consultant Services has prepared Engineer of Record Guidelines that may be found in UDOT's Document Management System (DM #20127), Project Manager Toolbox, and on the UDOT Website. The guidelines include EOR Compliance Form, EOR Selection & Approval Process, and EOR Minimum Selection Criteria (which may change as the Department develops the Local Government Program).

UDOT will establish a quality improvement team (QIT) to evaluate and revise the current EOR process. This MOU will be revised based on the QIT's recommendations.

Local Government Request for Qualifications

In order to qualify for Federal-aid funds for a Local-Administered Project-Specific RFQ, the local agency must comply with the advertisement and selection process as noted in the Consultant Services Manual of Instructions. This process must be documented and approved by the Consultant Services Manager or designated Local Government Contract Administrator. This requirement is part of the FHWA/UDOT Oversight Agreement and may also be found in 23CFR172.

Request For Qualifications – A consultant selected through a Local Government RFQ process does not have a dollar cap; the range is **\$200,000 to unlimited** within the fully disclosed Scope of RFQ. If the requester has justification for using the RFQ selection process for a contract under \$200,000, the requester may apply for a waiver from the Consultant Services Manager.

Waiver Requirement (Less Than Three Statements of Qualifications Received)

When Consultant Services advertises an RFQ on a federal-aid project and receives less than the prescribed minimum of three Statements of Qualifications (SOQ's) in response, Consultant Services will determine whether to pursue a waiver to proceed with the consultant selection under the current RFQ based on the following.

If Consultant Services only receives one SOQ, the current RFQ selection process in most cases will be canceled and the RFQ for the project may be re-advertised. Only in unusual circumstances would Consultant Services determine it is appropriate to pursue a waiver in this case.

If Consultant Services receives two SOQ's, Consultant Services will consider the competition issue when determining whether to pursue a waiver.

UDOT Waiver Required

If the project is for an Environmental Assessment Document, Consultant Services will request a waiver from the Director of Environmental Services or designee prior to proceeding with the consultant selection process.

If the project is for less than \$1,000,000 based on the Independent Cost Estimate (ICE) and is for other than an Environmental Assessment or Environmental Impact Statement such as design, Consultant Services will request a waiver from the Director of Engineering Services & Bridge Design or designee prior to proceeding with the consultant selection process.

FHWA Waiver Required

If the project is for over \$1,000,000 based on the ICE or if the project is for an Environmental Impact Statement, Consultant Services will request a waiver from the FHWA Project Delivery Team Leader or designee and FHWA Area Engineer prior to proceeding with the consultant selection process.

Environmental Projects

If a project is for the preparation of an Environmental Assessment or an Environmental Impact Statement, it is required for UDOT and Local Government Project Managers to proceed with an RFQ selection rather than selecting a consultant from the Pool. The reason for this is the nature of environmental projects. Environmental projects must have the latitude to develop or expand based on information discovered during the environmental process and should not be limited by arbitrary constraints. An RFQ selection allows Selection Teams the important opportunity to evaluate consultants' proposed project team and/or approach to the project during the selection process. The only exception to proceeding with an RFQ selection is if the Director of Environmental Services grants a waiver in writing for a small Environmental Assessment to be selected through the Pool. In this case, Project Managers will be required to submit the approved written waiver to Consultant Services along with the financial screening and contract request.

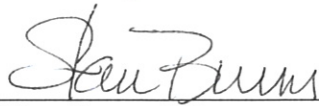
In accordance with 23CFR 771.13, the consultant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations. This work

includes environmental studies, related engineering studies, agency coordination and public involvement. Final design activities shall not proceed until the NEPA process has been completed. Final design activities are generally defined as those above what is necessary to complete the environmental document. FHWA and UDOT have defined final design as work that exceeds 30% of the design work required to advertise the project for construction.

According to the FHWA/UDOT Environmental Oversight Agreement all environmental work should not exceed the approximate 30% design rule without written approval from FHWA. UDOT's interpretation of the 30% design rule is that ALL "D" tasks from the UDOT Design Process Manual may be performed during the environmental phase but NO "P" tasks may be started until there is an approved environmental decision document.

Approval of Memorandum of Understanding

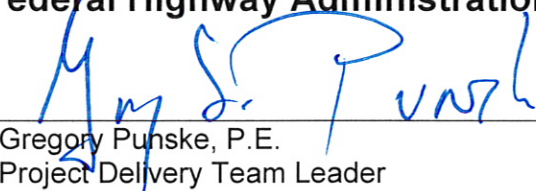
Utah Department of Transportation



Stan Burns, P.E.
Director of Engineering Services & Bridge Design

3/27/08
Date

Federal Highway Administration



Gregory Punske, P.E.
Project Delivery Team Leader

3/26/08
Date

cc: Gregory Punske, FHWA Utah Project Delivery Team Leader
Betty Bangerter, FHWA Utah Division Financial Manager
Carlos Bracerias, Deputy Director
Jim McMinimee, Director of Project Development
Ahmad Jaber, Director of Systems Planning & Programming
Stan Burns, Director of Engineering Services & Bridge Design
Gaye Hettrick, Consultant Services Manager
Chuck Larson, Comptroller
Cherise Young, Comptroller's Office
Kathy Starks, Systems Planning & Programming
Jimmy Holfeltz, Director of Fiscal Audit
UDOT Project Managers/Region Directors/Technicians
Consultant Services Website – Pool Contracting